

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

MARY SENA,

Plaintiff,

vs.

Civ. No. 97-104 BB/WWD

WAL-MART STORES, INC., a corporation,  
RICHARD GONZALES and DAVE LAMAR,  
in their official capacities, and SCOTT McLEOD  
and KEVIN ROMERO, individually,

Defendants.

MEMORANDUM OPINION AND ORDER

Defendant Wal-Mart Stores, Inc. and Defendant Richard Gonzales have filed a Motion to Strike Expert Testimony [docket no. 39]. The testimony sought to be excluded is that of a treating physician. Defendants feel that the treating physician will be called upon to render opinions which would make him subject to the disclosure provisions of Fed. R. Civ. P. 26(a)(2)(B). Our local rule D.N.M. LR-Civ 26.3(b) exempts treating physicians from the expert report disclosure requirement of Fed. R. Civ. P. 26(a)(2)(B). There is a question as to when a treating physician goes sufficiently far afield that an expert report should be required. This is something that could be addressed either by a motion in limine or by a timely objection at trial; however, the present circumstances do not call for something as dramatic as striking the expert testimony of the treating physicians.

**WHEREFORE,**

**IT IS ORDERED** that Defendants' Motion to Strike Expert Testimony [docket no. 39]  
be, and it is hereby, DENIED.

  
UNITED STATES MAGISTRATE JUDGE